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Regulatory
Town Hall

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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-181
Regulation title	Voluntary Registration of Family Day Homes – Requirements for Providers
Action title	Adopt new Voluntary Registration of Family Day Homes requirements for providers
Date this document prepared	December 16, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

This regulatory action will repeal 22 VAC 40-180, “Voluntary Registration of Family Day Homes – Requirements for Providers,” and establish a comprehensive new regulation, 22 VAC 40-181. The current regulation, 22 VAC 40-180, establishes general requirements and procedures that family day homes caring for fewer than six children must meet in order to obtain a certificate of registration from the Department of Social Services (DSS). Repeal of the existing regulation and adoption of a new regulation is the most efficient and effective way to make the necessary changes to achieve clarity and consistency.

Numerous amendments necessary to incorporate statutory changes have been made to 22 VAC 40-180 since it was promulgated in April 1993. Some of those amendments include: (1) additions to the definition of a family day home; (2) changes in background clearance requirements; and (3) requirements for proof of a child’s age and identity. The many amendments to 22 VAC 40-180 necessitate adopting a new regulation to achieve clarity and consistency. Many of the requirements of 22 VAC 40-180 will be incorporated in new 22 VAC 40-181. Overall, the new regulation will be clear and easy to follow, will incorporate all applicable requirements from the Code of Virginia (Code), and will provide reasonable health and safety guidelines for the protection of children cared for in these small homes.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Sections 63.2-217, 63.2-1704 and 63.2-1734 provide the legal authority for the State Board of Social Services (Board) to adopt regulations and requirements for voluntarily registered family day homes.

Section 63.2-217 authorizes the Board to “adopt such regulations, not in conflict with this title, as may be necessary or desirable to carry out the purpose of this title.”

Section 63.2-1704 mandates that the Board adopt regulations for voluntarily registered family day homes that include, but are not limited to: (1) the criteria and process for the approval of the certificate of registration; (2). requirements for a self-administered health and safety guidelines evaluation checklist; (3) a schedule for fees to be paid by the providers to the contract organization or to DSS if it implements the provisions of this section for processing applications for the voluntary registration of family day homes; (4) the criteria and process for the renewal of the certificate of registration; and (5) the requirement that upon receipt of a complaint concerning a registered family day home, the Commissioner shall cause an investigation to be made, including on-site visits as he deems necessary, of the activities, services, and facilities.

Section 63.2-1734 mandates that the Board “adopt regulations for the activities, services and facilities to be employed by persons and agencies required to be licensed under this subtitle, which shall be designed to ensure that such activities, services and facilities are conducive to the welfare of the children under the custody or control of such persons or agencies.”

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The Code mandates that the Board adopt regulations for voluntarily registered family day homes. The existing regulation has been in effect since 1993. There have been multiple changes to the Code and in the child care industry since this regulation became effective. These changes include: changes in the definition of a family day home, changes in background clearance requirements, the addition of requirements for proof of a child’s age and identity, and numerous changes in health and safety practices to reduce risks in the environment and to ensure that activities and services are conducive to the well-being of children.

Repeal of the existing regulation and adoption of a comprehensive new regulation is the most efficient and effective way to make the necessary changes to achieve clarity and consistency. The new regulation will be clear and easy to follow, will incorporate all applicable requirements from the Code, and will provide reasonable health and safety guidelines for the protection of children cared for in these small homes.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The majority of the provisions of the repealed regulation will be incorporated into the new regulation.

In addition, statutory changes necessitate additions to the regulation; these will be incorporated in the new regulation and include provisions pertaining to: (1) proof of a child's age and identity; (2) requirements for disclosure to parents of the percentage of time persons other than the provider will care for the child; (3) background clearance requirements for consistency with changes in the law and regulations; (4) declaration of liability insurance; (5) medication administration policy and training requirements; and (6) staff-to-child ratio requirements.

Additional changes to be made in the new regulation include, but are not limited to, inclusion of: (1) an updated process for withdrawals, denials, and appeals to comply with the Administrative Process Act; (2) update to include the actual steps that occur in the Voluntary Registration (VR) application and approval process (3) recordkeeping and reporting responsibilities of providers; (4) the VR Health and Safety Checklist; (5) list of fees for follow-up visits by contract agencies; (6) annual training requirements; (7) posting of Certificate of Registration and Information to Parents Statement requirements; (8) immunization requirements; (9) requirement that providers be able to read, write, and communicate with emergency personnel; (10) a definition for "substitute provider" and "surrender of certificate of registration"; and (11) updates to address national health and safety practices.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

Because this regulation is mandated by statute, the following alternatives were considered: (1) make no changes to the existing regulation and retain the current structure and language; (2) amend the regulation in its current structure and format; and (3) repeal the existing regulation and adopt a new regulation.

Due to the number of statutory changes that have occurred since this regulation became effective in April of 1993 and in industry health and safety practices, it was determined that promulgation of a comprehensive new regulation that has been restructured and re-formatted for clarity and consistency would be in the best interest of both providers and children. A comprehensive new regulation will provide clear, understandable requirements for providers and will best protect the health, safety, and welfare of children in care.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

DSS is seeking comments on the intended regulatory action, including but not limited to (1) ideas to assist in the development of a proposal, (2) the costs and benefits of the alternatives stated in this background document or other alternatives, and (3) potential impacts of the regulation. DSS is also seeking information on impacts on small businesses as defined in § 2.2-4007.1. Information may include (1) projected reporting, recordkeeping and other administrative costs, (2) probable effect of the regulation on affected small businesses, and (3) a description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email or fax to: Debra O'Neill, Licensing Consultant for Children's Programs, Virginia Department of Social Services, Division of Licensing Programs, 801 East Main Street, Richmond, VA 23219-2901; 804-726-7648; FAX: 804-726-7132; debra.oneill@dss.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

A public hearing will be held for 22 VAC 40-181 when the proposed regulation is published.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

DSS is using the participatory approach in the development of the proposal. It plans to survey the VR contract agencies and VR providers to collect comments concerning the need to modify or clarify the existing regulation. DSS also plans to establish a regulatory advisory panel (RAP) made up of VR contract agency representatives, VR family day providers, and DSS staff to provide professional technical assistance and review as the regulation is developed.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulatory action will have no adverse impact on the institution of the family and family stability. Clarification of the regulation has the potential to increase the availability of regulated child care by making voluntary registration more appealing to family day care providers.